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**THE CITY OF NEW YORK
LAW DEPARTMENT**

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July 1, 2020

VIA ECF

Hon. Mary Kay Vyskocil
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: Funderburk v. Barionnette, et al.,
19 Civ. 10365 (MKV)

Your Honor:

I am the attorney assigned to represent interested party the City of New York (the “City”) in the above-referenced matter.¹ The City writes, pursuant to the Court’s Order dated May 18, 2020 (ECF No. 25), to: (a) provide an update as to the status of the Department of Correction (“DOC”) investigation related to the events underlying the allegations in this case and note that a stay is no longer needed; (b) respectfully request that the Court enlarge the deadline for defendants Barionnette and Smith to respond to the Amended Complaint to September 1, 2020; and (c) respectfully request that the Court enlarge the deadline for the City to comply with its obligations pursuant to Local Civil Rule 33.2 to 60 days following the deadline for defendants Barionnette and Smith to respond to the Amended Complaint.

By way of background, plaintiff filed his Complaint on November 6, 2019. (ECF No. 2). In the Complaint, plaintiff alleges that, while being held at the Manhattan Detention Complex (“MDC”) on February 8, 2019, he was subjected to excessive force by DOC Correction Officer (“CO”) Ernest Barionnette and CO Brian Smith. (*Id.*) The Complaint further alleges that during a resulting appointment at the MDC health clinic, a “John Doe” medical provider failed to provide plaintiff with adequate medical care. (*Id.*) On December 5, 2019, the Court ordered this Office to identify the “John Doe” defendant identified in plaintiff’s Complaint. (ECF No. 8). This Office complied with that Order on January 31, 2020, identifying PA Charles Appiah as the

¹ This case is assigned to Assistant Corporation Counsel Andrew B. Spears, who is presently awaiting admission to this Court and is handling this matter under my supervision. Mr. Spears may be reached directly at (212) 356-3159 or aspears@law.nyc.gov.

“John Doe” defendant. (ECF No. 20). Waivers of service were returned on behalf of defendants CO Barionnette and CO Smith on December 31, 2019. (See ECF No. 16). On March 9, 2020, plaintiff amended his Complaint to also name PA Appiah as a defendant. (ECF No. 23). PA Appiah has not yet been served.

On February 27, 2020, the City filed a letter motion requesting that this case be stayed, as this Office was informed by DOC that the use of force investigation into the incident underlying this action was still pending. (ECF No. 21). On February 28, 2020, the Court granted the City’s request, staying this case for 60 days, and instructed the City to provide an update as to “the status of the investigation at the Department of Corrections at least five days before the expiration of the stay.” (ECF No. 22). On April 17, 2020, the City wrote to inform the Court that the use of force investigation remained ongoing, and requested that the Court continue the stay, pending the resolution of the investigation. (ECF No. 24). On May 18, 2020, the Court issued an Order instructing the City to inform the Court of the status of the DOC investigation by July 1, 2020. (ECF No. 25).

The City now writes to inform the Court that, as of June 26, 2020, the DOC investigation into the incident underlying this action has been closed. Consequently, the undersigned respectfully requests that the Court lift the stay of the instant matter, and enlarge the time for defendants Barionnette and Smith to respond to the Complaint to September 1, 2020. The undersigned further respectfully requests that the Court enlarge the deadline for the City to comply with its obligations pursuant to Local Civil Rule 33.2 to 60 days following the deadline for defendants Barionnette and Smith to respond to the Amended Complaint. These enlargements are requested to permit this Office sufficient time to communicate with the individual defendants, and assume representation, if appropriate, in light of the ongoing effects of the COVID-19 pandemic on DOC operations.

The City thanks the Court for its time and attention to this matter.

Respectfully submitted,



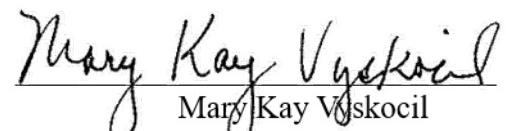
/s

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CC: **VIA U.S. MAIL**
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These requests are GRANTED. Accordingly, IT IS HEREBY ORDERED that the stay is lifted. IT IS FURTHER ORDERED that Defendants Barionnette and Smith shall answer by September 1, 2020. IT IS FURTHER ORDERED that the City shall comply with its obligations under Local Civil Rule 33.2 by November 2, 2020. The Clerk of Court is respectfully directed to terminate the letter motions pending at docket entries 26 and 24.

Date: July 8, 2020
New York, New York



Mary Kay Viskocil
United States District Judge